

APPLICANT'S DRAFT ORDER

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**

Application No. 20266 of 3400 Connecticut Partners LLC, pursuant to 11-X DCMR § 900.2 for special exception relief under 11-C DCMR § 703.2 from the minimum parking requirements of 11-C DCMR § 701.5 to construct a mixed-use retail and residential development in the NC-3 Zone located at 3400 Connecticut Avenue, N.W. (Square 2069, Lots 817-821).

HEARING DATES: July 29, 2020
PUBLIC MEETING: August 5, 2020
DECISION DATE: September 30, 2020

DECISION AND ORDER

This application was submitted on February 21, 2020 by 3400 Connecticut Partners LLC (“Applicant”). 3400 Connecticut Partners LLC is the current owner of the land. Following the public hearings, the Board of Zoning Adjustment (“BZA” or “Board”) voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing

By memorandum dated March 12, 2020, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3C, the ANC for the area within which the subject property is located; and the single-member district (“SMD”) representative for ANC 3C05. Pursuant to 11-Y DCMR § 402.1, on March 12, 2020, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 3C, and the owners of all property within 200 feet of the subject property. The hearing was originally scheduled for April 29, 2020. Due to the State of Emergency declared by Mayor Muriel Bowser on March 11, 2020 as part of an effort to slow the spread of coronavirus infections in the District of Columbia, the Board indefinitely postponed all hearings. The public hearing was rescheduled for July 29, 2020. By memorandum dated July 14, 2020, the Office of Zoning sent notice of the rescheduled virtual hearing to owners of all property within 200 feet of the property. By memorandum dated July 17, 2020, the Office of Zoning sent notice of the rescheduled virtual hearing to the Applicant and the parties. Notice of the hearing was published in the *D.C. Register* on July 24, 2020. The Applicant confirmed by affirmation that it posted notice of the public hearing on the subject property on July 13, 2020 and that the posting was maintained on July 17, 2020, July 20, 2020, and July 23, 2020. On July 14, 2020, the Applicant requested a waiver of the requirements to submit an Affidavit of Posting and Affidavit of Maintenance under 11-Y DCMR § 402.8-402.10 due to the lack of remote notarization protocols in place in the District of Columbia while the State of Emergency and accompanying city-wide social distancing measures were ongoing. The

Board granted the waiver request at the public hearing on July 29, 2020. (7/29/20 Transcript (“Tr.”) at 17.)

Public Hearing

The Board held a virtual public hearing on the application on July 29, 2020. At the end of the hearing, the Board closed the record and scheduled the case for decision at a virtual public meeting on August 5, 2020. At the virtual public meeting, the Board deferred its decision to a virtual public meeting on September 23, 2020. The Board closed the record, except for the requested draft findings of fact, conclusions of law, and an analysis of how the project meets the special exception relief requested; responses to those submissions; and supplemental reports from DDOT and OP based on previous hearing testimony or new submissions from the parties. Mr. Rosenman, the party in opposition, requested a postponement of the post-hearing filings, which the Board subsequently granted and rescheduled the decision to its virtual public meeting on September 30, 2020.

Party Status

The Applicant and ANC 3C were automatically parties in the proceeding. On July 13, 2020, Mark Rosenman, representing neighbors in opposition, filed an application for party status in opposition. The Board granted party status to Mr. Rosenman at the public hearing on July 29, 2020. In addition to Mr. Rosenman’s party status request, he also made a request for Jennifer Anderson to serve as his party representative, which the Board allowed.

Applicant’s Case

The Applicant provided testimony and evidence from Phil Kang, owner of 3400 Connecticut Partners LLC; Kevin Sperry of Kevin & Asako Sperry Architecture, PLLC and accepted by the Board as an expert in architecture; and Erwin Andres of Gorove/Slade Associates Inc. and accepted by the Board as an expert in transportation engineering. With the application, the Applicant proposed a new mixed-use retail and residential project, which would retain the existing Macklin apartment building and existing retail and construct a new 31-unit apartment building and a new four-unit townhouse-style building with approximately 2,712 square feet of retail space, resulting in a total of 52 residential units and 16,097 square feet of retail (“Project”). The Applicant described the subject property and its physical constraints, its exploration of numerous options for on-site parking, and its ultimate conclusion that on-site parking was infeasible, necessitating the instant application for special exception relief. The Applicant explained how granting the special exception would be in harmony with the general purpose and intent of the Zoning Regulations and would not tend to adversely affect the use of neighboring property – the Project would encourage pedestrian activity by replacing the existing surface parking lot with a public plaza, improve pedestrian safety by closing a non-compliant curb cut along Connecticut Avenue, and would contribute much-needed housing, including affordable housing, to Cleveland Park. The Applicant noted that any potentially adverse impacts posed by the Project would be adequately mitigated through the Applicant’s commitment to a robust Transportation Management Plan (“TDM Plan”), as supported by DDOT, as well as a Loading Management Plan (“LMP”), a result of the Applicant’s extensive outreach and negotiation with ANC 3C. (Exhibits (“Ex.”) 1-15, 29-29B, 32-32A, 42-42C.) At the July 29, 2020 public hearing, the Applicant’s team presented testimony in support of the requested special exception relief. (Tr. at 18-39.) The Applicant demonstrated that the application satisfied the applicable

requirements of the Zoning Regulations under 11-C DCMR § 703.2 and 11-X DCMR § 901.2 for approval of the special exception. Following the virtual public meeting of August 5, 2020, at the Board's request, the Applicant filed a draft order of approval on September 7, 2020. (Ex. [REDACTED].)

OP Report

By report dated July 17, 2020, OP recommended approval of the special exception relief. (Ex. 73.) OP found that the requested relief would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Project would provide 35 new residential units in addition to the 17 existing units, and would not tend to affect adversely the use of neighboring property because the Property is located in close proximity to the Cleveland Park Metro Station and Metrobus stops, which reduces additional demand for parking, and the Applicant proposes to close the existing curb cut on Connecticut Avenue. Pursuant to the standards set forth in 11-C DCMR §703.2, an applicant need only demonstrate satisfaction of one standard of that provision for the requested parking relief. In their report, OP found the Project satisfies several of the ten standards under 11-C DCMR §703.2. Under 11-C DCMR § 703.2(a), OP found that the required parking on-site was not feasible due to the physical constraints of the property, including the lack of a feasible location for a curb cut. The existing curb cut on Connecticut Avenue is prohibited under 11-H DCMR § 204.1 and there is insufficient depth to provide below-ground parking. OP further cited the historic nature of the existing Macklin building, a contributing resource to the Cleveland Park Historic District, and the steep sloping of the property along Newark Street, N.W., both of which prohibit the use of Newark Street for a curb cut. OP found that pursuant to 11-C DCMR § 703.2(b), the Property is easily accessible by public transportation, being located approximately 500 feet south of the Cleveland Park Metrorail station and in close proximity of several bus lines, and with a rating of "Very Walkable with Good Transit" by Walkscore. Under § 703.2(c), the land use or transportation characteristics of the neighborhood minimize the need for on-site parking spaces given the property's close proximity to public transportation and the Cleveland Park shopping area. Under § 703.2(d), OP found that the project's addition of 35 residential units, including affordable units, would not be expected to significantly increase traffic congestion in the area. Under § 703.2(h), OP reiterated that the existing driveway from Connecticut Avenue is non-compliant and providing parking access towards the rear of the Property was not possible due to the grade change. Under § 703.2(j), OP found that the presence of the Macklin building, a contributing resource to the Cleveland Park Historic District, further complicated the provision of on-site parking at the Property. OP gave further support to the application at the public hearing on July 29, 2020, recommending approval of the requested parking relief and resting on the record of their staff report. (Tr. at 130-138.) The Board is convinced by the OP report given their comprehensive analysis and expertise in planning impacts of proposed uses and developments.

DDOT Report

By report dated April 20, 2020, DDOT stated that it had no objection to the requested special exception, subject to the conditions set forth in the Applicant's TDM Plan. (Ex. 33.) DDOT concluded that the Applicant's request would have no adverse impacts on the travel conditions of the District's transportation network, considering the amount of available non-Residential Parking Permit on-street parking within a two-block radius of the project as well as the TDM Plan. DDOT testified at the July 29, 2020 public hearing, reiterating its support for the project

and articulating the practical difficulties in providing the required parking on-site. (Tr. at 138-151.) The Board is convinced by the DDOT report because of its comprehensive analysis and because of DDOT's expertise in assessing transportation impacts of proposed uses and developments.

ANC Report

At a regularly scheduled and duly noticed public meeting held on July 20, 2020, at which a quorum was present, ANC 3C voted to adopt a resolution in support of the application conditioned upon the acceptance of certain parking and loading conditions. (Ex. 98.) The ANC found that given the Applicant's commitment to prohibiting residents from obtaining Residential Parking Permits ("RPP") by incorporating such a clause in all new leases and lease renewals and the Applicant's commitment to using commercially reasonable efforts to secure eight off-site parking spaces in addition to numerous loading conditions, the Project would effectively mitigate any potential adverse effects to the surrounding neighborhood. At the July 29, 2020 hearing, Nancy MacWood, the Chair of ANC 3C, testified regarding the ANC's support. (Tr. at 116-130 and 153.)

Persons in support

The Board heard testimony and received 46 letters in support of the application. Four people testified at the July 29, 2020 hearing in support of the application: Bob Ward, a neighbor speaking on behalf of Cleveland Park Smart Growth; Ryan Keefe, speaking on behalf of Ward 3 Vision; Joe McCarthy, managing partner of neighboring Tino's Pizzeria; and Maura Duffy, a neighbor. Testimony and letters in support articulated the positive impacts the Project would have on the Cleveland Park community, including the following: (1) the significant benefits offered by the Project, including adding more affordable and family-size housing; (2) closing the existing curb cut on Connecticut Avenue, which poses a danger to pedestrians; (3) creating an inviting public plaza that will help engage the community; (4) the transit-oriented and walkable nature of the Property given its proximity to numerous alternative modes of transportation as well as the nearby retail, library, post office, and grocery stores; (5) the anticipated increase in foot traffic the Project would generate, benefitting local businesses; and (6) the significant mitigation measures to which the Applicant has committed in order to alleviate any potentially adverse impacts of the Project. (Tr. at 106-115; Ex. 16, 34, 35, 36, 37, 47, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 65, 66, 67, 69, 70, 72, 73, 74, 77, 79, 81, 88, 90, 91, 95, 99, 100, 101, 102, 103, 110, 120, 121, 124, 125, 126, and 127.)

Party in opposition

Mr. Rosenman, who was granted party status, testified in opposition at the hearing with Ms. Anderson questioning the witnesses. Mr. Rosenman's testimony included the following potential adverse impacts of the Project and conditions in the neighborhood that merit the Board's consideration: (1) the potential effect of the Project's lack of parking on local businesses; (2) DDOT's planned elimination of three-to-four on-street parking spaces—which is unrelated to the Project; (3) DDOT's temporary closure of the service lane in light of the COVID-19 pandemic; (4) the proximity of the Cleveland Park Metrorail station increasing the demand for parking; (5) the parking demand created by the Project's residents and retail patrons; (6) the effect of additional traffic on pedestrian safety; and (7) the Applicant's plan to remove the existing surface parking lot located on the Property. (Tr. at 76-83; Ex. 87.)

Persons in opposition

The Board heard testimony and received 37 letters in opposition. Six people testified in opposition: Jennifer Anderson, Judith Kennedy, Karen Lightfoot, Alex Sanguinetti, Cheryl Tennille, and Arlene Holen. The testimony and letters detailed the following concerns: (1) some current Macklin residents appear to own cars that they park on the street; (2) the narrowness of Newark Street; (3) the additional parking demand created by the new residents of the Project; (4) the elimination of the existing surface parking lot on the Property; (5) issues associated with loading, deliveries, and garbage collection; (6) exacerbation of current traffic congestion; (7) exacerbation of the current demand for parking; (8) pedestrian safety; (9) increased reliance on vehicle transportation due to the COVID-19 pandemic; and (10) excavation risks. (Tr. at 89–105; Ex. 40, 41, 43, 45, 62, 64, 68, 71, 78, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 96, 97, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, and 128.)

FINDINGS OF FACT

1. The subject property is located at 3400 Connecticut Avenue, N.W. (Square 2069, Lots 817-821) (the “Property”).
2. The Property is located in the NC-3 Zone District.
3. The Property is located in the Cleveland Park neighborhood of Ward 3. It consists of approximately 29,923 square feet of land area and is currently improved with an apartment building, The Macklin, a contributing resource to the Cleveland Park Historic District; a one-story retail building adjacent to the apartment building; and a surface parking lot for commercial visitors to the retail building accessed via a curb cut off of Connecticut Avenue. (Ex. 12, 42C.)
4. The Property includes a significant grade change, sloping upward from Connecticut Avenue. (Ex. 12, 73.)
5. The Property is bounded by Connecticut Avenue N.W. to the east, Newark Street N.W. to the south, one- to two-story retail buildings to the north, and large, single-family homes to the west. (Ex. 12.)
6. The Property is located 500 feet from the Cleveland Park Metrorail Station. The Property is immediately served by the L1 and L2 bus routes, which are directly on Connecticut Avenue, and the H3 and H4 routes, which are less than a quarter-mile from the Property. (Ex. 12.)
7. The surrounding area consists of a mixture of residential and retail buildings. Directly south of the Property is the Cleveland Park Library. (Ex. 12.)

Proposed Development

8. The Applicant proposes to create a mixed-use development in the Cleveland Park neighborhood. The Project will retain the existing Macklin building along with its 17 residential units and construct two new structures, including a four-story, 31-unit apartment

building at the rear of the Property and a four-unit, townhouse-style building with ground-floor retail at the southeast corner of the Property. The Project will add 2,712 square feet of retail space and provide a total of 16,097 square feet of retail floor area including the existing retail area at the Property. (Ex. 12, 42C.)

9. The Applicant proposes to close the existing curb cut on Connecticut Avenue and to replace the existing surface parking lot with a pedestrian-friendly public plaza improved with greenery and attractive paving. (Ex. 12, 42C.)
10. The Project will create 35 new residential units and retain the 17 existing residential units in The Macklin for a total of 52 residential units. Included in the 35 new residential units are affordable housing units consistent with the Inclusionary Zoning (“IZ”) regulations. (Ex. 12, 73.)
11. The overall lot occupancy of the Project will be a maximum of approximately 42.7%. The project will have an overall floor area ratio (“FAR”) of 1.99 and a Green Area Ratio (“GAR”) of 0.3. (Ex. 42C.)
12. The Applicant explored multiple options for parking space location, but ultimately determined providing parking spaces on the Property would be infeasible. First, the existing curb cut on Connecticut Avenue and surface parking lot violate the Zoning Regulations and DDOT’s policy for curb cuts and therefore must be removed. The Applicant explored locating the parking lot below the new apartment building, but found such a location to be infeasible due to the necessity of excavating below-grade rock formations, which would pose a risk to the adjoining property. The Applicant next investigated a ramp from the public alley to the second-floor level of the apartment building, but such an option would eliminate nine units from the project and create highly inefficient unit layouts. Finally, the Applicant explored providing parking below the retail level of the townhome building. This option was similarly infeasible because it would require a non-compliant curb cut on Connecticut Avenue, would effectively eliminate the pedestrian-friendly public plaza, and would necessitate risky excavation near a Metrorail tunnel. (Ex. 12, 42C.)

Contested Issues

Inability to Provide Parking On-Site

13. Mark Rosenman and the persons in opposition challenged the Applicant’s request for relief from the requirements of 11-C DCMR § 701.5 to provide parking on-site at the Property. The opposition cited the existing high demand for parking in Cleveland Park and argued that the Project would put additional strain on that demand, explaining that current traffic congestion in the area caused by drivers seeking parking poses risk to pedestrians. The opposition noted that the parking requirement applicable to the project has already been reduced by 50% due to its close proximity to a Metrorail station and, therefore, the Applicant should not benefit from an additional 50% reduction. (Tr. at 76-83, 89-93, 98-99, 101-104; Ex. 40, 41, 43, 45, 62, 64, 68, 71, 78, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 96, 97, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, and 128.) The Board understands the opposition’s concerns over on-street parking demand in Cleveland Park.

However, as the Applicant compellingly demonstrated, provision of parking spaces on-site is infeasible for several reasons. As the Applicant's architect, Mr. Sperry, testified, parking is infeasible on the eastern portion of the property beneath the proposed townhome building due to insufficient width for a ramp. To achieve below-grade parking at that location would require between approximately 85 and 100 feet of ramp length. Given the existing Macklin building, which is historically significant and contains existing housing, there is only 45 feet available. Furthermore, to locate a ramp at that location would eliminate the proposed pedestrian plaza, one of the key benefits that the Project provides to the neighborhood. (Tr. at 34-35.) Next, the Applicant explored providing parking on the western portion of the Property, beneath the new apartment building. However, given the substantial rock formation below grade, the required excavation would pose significant risk to the neighboring properties. (Tr. at 35.) Were the Applicant to provide on-grade parking, an entire level of residential units would need to be eliminated, which would eliminate 25% of the proposed units, in addition to creating an inefficient relocation of the stairs and elevator. *Id.* As the Applicant, OP, and DDOT explained, the existing 15 commercial parking spaces located on the Property cannot remain. The curb cut on Connecticut Avenue is non-compliant and needs to be closed, additionally the surface parking lot itself violates 11-C DCMR §§ 710.2(b)(2) and 714. (Tr. at 23, 65, 67, 133, 135, 138, 140-141; Ex. 12, 73.)

14. The opposition claimed that the Applicant had not demonstrated why the existing 15 parking spaces on the Property must be removed and that eliminating those parking spaces and adding 35 new units to the site would exacerbate on-street parking problems. (Tr. at 76-83, 89-93, 98-99, 101-104; Ex. 40, 41, 43, 45, 62, 64, 68, 71, 78, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 96, 97, 104, 105, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, and 128.) [I know it is a pain to tease out the citations to relief from the parking requirement from eliminating the existing lot but I think it is helpful to make these points separately. The Board finds that the existing commercial parking lot is underutilized and therefore its elimination would not have a substantial effect on demand for on-street parking nearby. As ANC Commissioner Nancy MacWood testified, the existing lot is restricted to the commercial tenants at the Macklin, which do not generate much parking traffic and therefore the lot is very frequently empty. (Tr. at 152-153.) Therefore, the Board does not find that elimination of that parking lot will automatically cause further strain to the surrounding area's on-street parking availability, and the additional retail space only comprises 17% of the total retail of the Project. Ms. Anderson also argued that the curb cut and parking lot were grandfathered and should be allowed to remain (Tr. 64, at Ex. 123.) However, Ms. Anderson offered no evidence to support this claim and both DDOT and the Applicant clarified that DDOT's policy is to re-review every curb cut in the case of redevelopment. The only time a curb cut might be grandfathered in is in the case of refilling an existing building with the same land use, but any major renovation, change of land use, or redevelopment triggers a new review of curb cuts and the existing curb cut on the Property is non-compliant. (Tr. at 65, 140-141; Ex. 12, 73.) Accordingly, the Board finds that despite the Applicant's efforts, parking on-site is logistically infeasible and that the requested parking relief is necessary given the physical constraints of the property. The Applicant has committed to restricting residential parking permits on all future residents of the Project and making all commercially reasonable efforts to procure eight off-site parking spots for Project residents. (Ex. 32A, 89.) The Board also notes that any potential adverse parking impacts will be mitigated through the Applicant's TDM Plan and LMP.

Current Resident Parking

15. The persons in opposition dispute the Applicant's alleged number of current Macklin residents who own a car. Ms. Anderson testified that she has observed at least seven tenants currently residing at the Macklin who park cars on the street. (Tr. at 60, 92; Ex. 108 and 123.) The Applicant testified to conducting a survey of current Macklin residents, with a 100% response rate, only one the current 17 tenants indicated that they own a car. (Tr. at 41-42, 58-60, 154.) Irrespective of the level of car ownership at the property, the Board concludes that this is not a material issue for the Board's determination as to the requested parking relief. The Applicant has committed to a robust TDM plan as well as placing the RPP restriction on future residents. Additionally, the Applicant has committed to including amendments to lease renewals that include the RPP restriction and marketing the Project to individuals who do not own cars.

Transportation Capacity

16. The persons in opposition raised concerns regarding traffic congestion generated by the Project. (Tr. at 134, 137, 159; Ex. 41, 64, 85, 92, 97, 112, and 116.) The Applicant provided a Transportation Report analyzing the Project's potential impacts on traffic, concluding that the Project's impact on traffic congestion would be minimal. (Ex. 32A.) DDOT further testified that it did not anticipate the Project would generate noticeable traffic changes because the number of new units is low. (Tr. at 142.) Any minimal increases in traffic congestion would be addressed by the Applicant's robust TDM Plan and LMP as well as the conditions agreed to with the ANC. Furthermore, the Property's proximity to mass transit alternatives as well as the surrounding area's walkability would further reduce reliance on vehicular traffic to and from the project. (Ex. 32A, 33, 73.) The Board concludes that any minimal traffic congestion generated by the Project will not adversely affect the surrounding neighborhood. The Applicant committed to numerous conditions to alleviate any increases in traffic, including placing RPP prohibitions in all new leases, lease renewals, and amendments, thus highly discouraging residents from owning a car. The Cleveland Park neighborhood in which the Property is located is pedestrian-friendly in that it offers numerous daily life amenities, from the public library to the Post Office to grocery stores, all within a very short distance, as well as accessibility to mass transit. Accordingly, the Board finds that the Project will not adversely affect the surrounding area by increasing vehicular traffic.
17. The parties in opposition raised concerns about an increased demand for parking spaces resulting from the temporary closures of parking spaces and the decreased use of public transportation due to the current COVID-19 pandemic. (Tr. at 92; Ex. 62, 84, 87, 92, 104, 109, 112, 117, 118, and 123.) DDOT responded that the closure of the service lane due to the pandemic was temporary. (Tr. at 143.) Mr. McCarthy, a local business owner testified that the temporary street closure had actually been beneficial to local businesses as it has promoted foot traffic. (Tr. at 112.) The Board anticipates that the temporary lane closure as well as the current decrease in public transportation use from the pandemic are temporary. Although the timeframe of these impacts is unpredictable, the Board does not wish to engage in hypotheticals involving the unknown. The Board does not find the pandemic-related

transit changes are relevant to the determination of the Applicant's request for special exception relief.

18. Persons in opposition raised concerns over DDOT's planned closure of three to four parking spaces for a streetscaping project. (Tr. at 73, 79-80; Ex. 87, 108, and 123.) DDOT testified that the streetscaping closure of three to four spaces was intended to improve pedestrian safety at the Connecticut Avenue and Ordway Street intersection. (Tr. at 143.) The Board finds that DDOT's implementation of an important policy initiative must be weighed against the relatively small impact on the neighborhood parking supply. Accordingly, the Board will not consider DDOT's closure of the nearby parking spaces for safety purposes in its evaluation of the Applicant's request for special exception relief.

Loading

19. Persons in opposition raised concerns regarding loading difficulties, specifically referencing existing problems with moving trucks obstructing Newark Street. The opposition cited the narrow width of Newark and Ordway Streets and the curving nature of Newark Street (Tr. at 66-67, 92, 94-95, Ex. 62, 86, 112, 116, and 128.) As the Applicant testified, the loading conditions of the Property will be vastly improved by the addition of two new loading zones and the implementation of a Loading Management Plan that was a result of extensive negotiations with the ANC. The 30-foot-wide curb cut on Connecticut Avenue will be closed and replaced with a loading zone. In addition, a new 24-foot deep loading area will also be installed off the alley at the rear, northwest corner of the site. (Tr. at 23, 32-33, 52-53.) The Applicant negotiated a number of loading conditions with the ANC which were incorporated into a Loading Management Plan as described in the Transportation Statement and supported by DDOT. (Tr. at 23, 27-28, 36-38, 75, 152, 161; Ex. 32A, 33, 98.) Mr. Ward, who spoke in support of the application, noted that the Applicant has been very proactive in addressing the issue of loading and trash collection to move such activity away from Newark Street. (Tr. at 107-108.) ANC Commissioner MacWood specifically noted the Applicant's proposed addition of two new loading areas and commitment to the ANC's loading conditions. (Tr. at 119-121.) The Board concludes that the conditions of the LMP and the new loading areas will alleviate the current loading strain on Newark Street and serve any future loading needs of the Project. The Applicant has made a considerable effort to address the community's concerns by agreeing to the ANC's loading conditions. The new loading areas will actually help to remediate the existing congestion in the area by relocating deliveries, trash pick-up, and residential move-ins and move-outs away from Newark Street.

ANC Conditions

20. Persons in opposition raised concerns regarding the Applicant's ANC-endorsed conditions, particularly the loading conditions and RPP prohibition. With regard to loading, the opposition cited the narrow width of Newark and Ordway Streets and the curving nature of Newark Street and questioned whether trucks would have enough width to turn in and out of the alley which is accessed from Ordway Street. (Tr. at 66-67, 92, 94-95; Ex. 62, 86, 112, 116, and 128.) The ANC, OP, DDOT, and the Applicant's transportation consultant all agreed that the loading conditions set forth in the LMP will adequately mitigate the effects of the Project's loading. (Ex. 32A, 33, 73, 98.) The Applicant has agreed to designate the alley

and Connecticut Avenue loading areas for trash pick-ups, deliveries, and move-ins and move-outs during specified timeframes. The Board is persuaded by OP, DDOT, the ANC, and the Applicant that the LMP adequately addresses the Project's potential loading impacts. As persons in opposition noted, the frequent loading currently occurring on Newark Street presents pedestrian hazards and should be avoided. Therefore, the LMP improves safety in the neighborhood by diverting loading away from Newark Street to two safer loading zones.

21. Persons in opposition also raised concerns regarding the enforceability of the RPP prohibition which was included in the ANC conditions. Specifically, the opposition argued that DDOT has stated it does not have authority to issue or enforce RPP prohibitions. (Tr. at 129; Ex. 108, 112.) However, as Commissioner MacWood explained, the D.C. Council recently passed emergency legislation that would specifically ensure that RPP prohibitions are enforced (Tr. at 123-125.) DDOT testified that although there is not yet a system in place to track RPP prohibitions by address, DDOT is in the process of responding to that recently-passed legislation and has also already begun scoping out a data collection research project that will be funded this year to address the effectiveness of RPP restrictions and how to handle their enforcement. (Tr. at 145, 147.) The Board has, in the past, incorporated such RPP restrictive conditions based on the Applicant's commitment to contractually enforce this for future residents. The Board welcomes the Council's action and looks forward to DDOT's work on this issue. In this case, given the that the Applicant has committed to incorporate the RPP restriction into all future leases and lease renewals, the Board supports the ANC-endorsed RPP restriction and finds that it constitutes an adequate and appropriate mitigation measure.

Purpose and Intent of the Zoning Regulations

22. Persons in opposition argued that the Project is not in harmony with the purpose and intent of the Zoning Regulations. (Tr. at 80-81, 158-159; Ex. 104, 112, 123.) In particular, the opposition argued that the Project was not consistent with the general purposes of the NC-3 Zone as set forth in 11-H DCMR §500.1. (Tr. at 132-133; Ex. 123.) OP testified, both at the hearing and in their report, that the Project does satisfy the purposes set forth in the NC-3 Zone. Connecticut Avenue is a designated street and the existing curb cut would not be permitted for a new project in the NC-3 Zone; therefore, the Project's closure of that curb cut furthers the goals of the NC-3 Zone. (Tr. at 133; Ex. 73.) The Board agrees with OP that the project is consistent with the purposes in the NC-3 Zone. Not only is the closure of the non-compliant curb cut consistent with the NC-3 Zone, the construction of a pedestrian plaza will both improve pedestrian activity and safety, the scale of the project and its mixed uses are compatible with the surrounding buildings, and the project will provide additional housing, particularly affordable housing, in the NC-3 Zone.

Adverse Impacts on Neighboring Properties

23. Persons in opposition argued that the application should be denied due to its adverse impacts on the surrounding neighborhood. In particular, the opposition claimed that the Project would adversely affect the neighborhood by eliminating existing parking and causing increased traffic congestion. (Tr. at 76-77, 81, 83, 91, 94, 160; Ex. 84, 104, 108, 112, 113, 115, 123, 128.) In response, OP testified that it did not believe the Project would tend to

adversely affect neighboring properties, noting that the closure of the existing curb cut and other improvements to pedestrian activity and safety provided by the Project outweigh any potential adverse impacts. (Tr. at 133-135.) The Board recognizes the Project may have some impacts related on neighboring properties. All projects impact their surrounding area in some way. The question is the extent to which these impacts are adverse and whether they are adequately mitigated. As discussed by OP, the adverse impacts standard is a balancing act. The Board agrees with OP and DDOT that the Applicant has sufficiently mitigated any potential adverse impacts through the robust TDM Plan and LMP as well as additional conditions agreed to with the ANC.

CONCLUSIONS OF LAW

Special Exception Relief

1. The Applicant requests a special exception pursuant to 11-C DCMR § 703.2 for relief from the parking requirements. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code §6-641.07(g)(2), to grant special exceptions, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to specific conditions. *See* 11-X DCMR §901.2.
2. The Board's discretion in reviewing an application for a special exception is limited to a determination of whether the applicant has complied with the requirements under the specific provision as well as Subtitle X §901.2. If the applicant meets its burden under the requirements, then the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *see also Washington Ethical Soc. v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980). As described below, the Applicant has demonstrated this application satisfies the requirements of 11-C DCMR § 703.2-4 and 11-X DCMR § 901.2; therefore, the Board grants the special exception relief requested.
3. Based on the Findings of Fact above, including OP and DDOT's analysis, the Board finds that the application is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, pursuant to 11-X DCMR § 901.2. The Project will contribute additional housing, including affordable housing, additional retail along Connecticut Avenue, and increase pedestrian safety and activity by constructing a public plaza and eliminating the non-compliant curb cut on Connecticut Avenue. The following paragraphs detail the Applicant's satisfaction of the general special exception standards:
 - a. The application furthers the goals of the NC-3 Zone District. These standards, as set forth in 11-H DCMR § 500.1, are to (a) encourage compatibility of development with the purposes of the Historic Landmark and Historic District Protection Act of 1978; (b) limit the height of new buildings and encourage a scale of development and a mixture of building uses that is generally compatible in scale with existing buildings; and (c) provide for retention of existing housing within the Cleveland Park

commercial area to help meet the need for affordable housing and to enhance pedestrian activity, safety, and consumer support for businesses in the commercial area.

- b. The Board finds that the application would advance the goals of the NC-3 Zone by improving pedestrian safety, contributing much-needed housing to the Cleveland Park neighborhood, retaining a contributing structure in the Cleveland Park Historic District, and providing consumer support for businesses along Connecticut Avenue. By closing the existing curb cut on Connecticut Avenue, the application improves pedestrian safety. DDOT strongly discourages curb cuts as they present a hazard to pedestrians. The Property's location along the busy Connecticut Avenue makes closure of this curb cut all the more impactful. The Project also will replace an existing underutilized surface parking lot with a pedestrian plaza, thus enhancing pedestrian activity. By crafting a project dependent on alternative modes of transportation – mass transit, walking, biking – the Project encourages a pedestrian-friendly environment. The Project also meets the need for more housing in Cleveland Park by contributing 35 new residential units, including affordable and family-size housing, and retaining the existing 17 units. Accordingly, the Board finds that the Project is consistent with the goals set forth for the NC-3 Zone pursuant to 11-H DCMR § 500.1 and is in harmony with the general purpose and intent of the Zoning Regulations.

- c. The Project will not adversely affect neighboring property. To the contrary, the Project improves pedestrian safety in the area by eliminating a non-compliant and dangerous curb cut on Connecticut Avenue, improving existing loading issues through the implementation of the LMP, and providing a new pedestrian plaza. Furthermore, the Applicant's Project is sensitive to neighboring properties. The Applicant explored providing below-grade parking underneath the new apartment building on the western portion of the Property, but found that the danger such excavation would pose to the neighboring properties due to an underground rock formation was too high. The Board acknowledges the opposition's concern over the Project's impacts on the surrounding area. Every project will have some impact on the neighborhood in which it is built, as does this one. Without mitigation, these impacts could be adverse. However, as explained in the Applicant's parking study, the Project is expected to generate only a minimal parking demand. As the Applicant's parking study reveals, the observed existing demand for on-street parking spaces does not exceed the available supply. DDOT has also found that the amount of available non-RPP on-street parking within a two-block radius of the property is sufficient to meet the needs of the project. Any minimal parking demand generated by the project will be lessened due to the strong TDM Plan and LMP to which the Applicant has committed. Therefore, the Board finds that the inconsequential amount of parking demand the Project might generate has been adequately mitigated through the Applicant's TDM Plan and LMP. The Board accepts OP and DDOT's recommendation on this point.

- d. The Board acknowledges the opposition's concern over existing traffic congestion and parking demand. Additionally, the opposition frequently noted DDOT's recent

closure of several on-street parking spaces as well as the temporary closure of the service lane due to the COVID-19 pandemic. However, existing traffic patterns are only relevant to the Board's consideration of the requested special exception relief where existing traffic patterns are such that the introduction of new traffic generated by a project would create an adverse impact. That is not the case here. Here, the Applicant has demonstrated, as agreed by OP and DDOT, that any potential adverse impacts generated by the Project on the surrounding traffic patterns are mitigated by the TDMP and LMP agreed-to by the Applicant.

4. Pursuant to 11-C DCMR § 703.2, to obtain special exception relief from the parking requirements, an applicant must demonstrate that it satisfies at least one (1) of the following criteria:

- a. *Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;*
- b. *The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;*
- c. *Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;*
- d. *Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood;*
- e. *The nature of the use or structure or the number of residents, employees, guests, customers, or clients who would reasonably be expected to use the proposed building or structure at one time would generate demand for less parking than the minimum parking standards;*
- f. *All or a significant proportion of dwelling units are dedicated as affordable housing units;*
- g. *Quality of existing public, commercial, or private parking, other than on-street parking, on the property or in the neighborhood, that can reasonably be expected to be available when the building or structure is in use;*
- h. *The property does not have access to an open public alley, resulting in the only means by which a motor vehicle could access the lot is from an improved public street and either:*
 - i. *A curb cut permit for the property has been denied by the District Department of Transportation; or*
 - ii. *Any driveway that could access an improved public street from the property would violate any regulation of this chapter, of the parking provisions of any other subtitle in the Zoning Regulations, or of Chapters 6 or 11 of Title 24 DCMR;*
- i. *The presence of healthy and mature canopy trees on or directly adjacent to the property; or*
- j. *The nature or location of a historic resource precludes the provision of parking spaces; or providing the required parking would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the historic resource.*

5. The Board concludes that the Applicant has demonstrated that the application meets several of the standards set forth in 11-C DCMR §703.2 and accordingly satisfies this requirement for special exception relief to the parking requirements.
 - a. Given the physical constraints of the Property, namely the significant amounts of below-grade rock, the sharp grade change sloping upward from Connecticut Avenue, the existence of a contributing structure in the Cleveland Park Historic District, and the general parking supply in the neighborhood, the Board finds that the required parking spaces cannot be provided either on the lot or within 600 feet. Furthermore, the existing curb cut is not compliant under 11-H DCMR § 204.1 as Connecticut Avenue is a designated roadway, and the existing surface parking lot is not compliant under 11-C DCMR §§ 710.2(b)(2) and 714. The Board finds that due to these physical constraints of the Property, the Applicant has satisfied the requirements of 11-C DCMR § 703.2(a), warranting special exception relief from the parking requirements.
 - b. The Property is well-served by mass transit with the Cleveland Park Metrorail Station located less than 500 feet from the Property; L1, L2, H3, and H4 bus routes in close proximity; and a Capitol Bikeshare station immediately adjacent to the Property. The Board finds that the Property is well-suited to multiple alternative modes of transportation and the Applicant has demonstrated that the application meets the requirements of 11-C DCMR § 703.2(b), warranting special exception relief from the parking requirements.
 - c. The land use characteristics of the neighborhood itself also greatly minimize the need for parking. The property is located on a major commercial corridor. Directly across the street from the Property are various restaurants, a pharmacy, a dry cleaner, a hair salon, a bank, and other retail stores. A public library and Post Office are also immediately proximate. Not only is the rest of the city easily accessible from the Property thanks to the numerous transportation options, but the surrounding area itself provides many daily necessities, thus encouraging a pedestrian-friendly community. Accordingly, the Board finds the land use and transportation characteristics of the neighborhood greatly minimize the need for parking, satisfying 11-C DCMR § 703.2(c).
6. The Board concludes that the Applicant's request for a reduction is for the "amount that the applicant is physically unable to provide" as required by 11-C DCMR § 703.3. As noted in COL 5(a) above, the site characteristics prevent the location of any parking spaces on site. Additionally, the Applicant's plan to retain the Macklin, a contributing building to the Cleveland Park Historic District, further supports the need for the requested the parking relief. As discussed above, the existing surface parking lot and curb cut are non-compliant with the Zoning Regulations. The Applicant explored the option of locating below-grade parking underneath the Macklin; however, due to the excavation risk to the historic structure, preservation of that contributing building makes below-grade parking is infeasible. The Board finds the location of the Macklin building, a contributing resource to the Cleveland Park Historic District, precludes the provision of parking spaces on-site. Therefore, the Board

concludes that the Applicant satisfies 11-C DCMR § 703.3 for special exception relief from the parking requirements.

7. The Board, as noted below, conditions this approval on the transportation demand management plan approved by the District Department of Transportation, as required by 11-C DCMR §703.4.
8. Pursuant to D.C. Official Code § 6-623.04, the Board is required to give “great weight” to the recommendations of the Office of Planning. In this case, OP recommended approval of the application, and for the reasons stated in this order, the Board concurs with that recommendation. The Board is persuaded by OP’s reports and testimony in support of the application and the conditions of approval given OP’s thoughtful analysis and the specialized knowledge OP has for assessing special exceptions for developments like the Project.
9. In accordance with D.C. Official Code § 1-309.10(d), the Board must give “great weight” to the written statements and recommendations of the affected ANC. In this case, ANC 3C recommended approval of the application, and, for the reason stated in this order, the Board concurs with that recommendation. The Board accorded the statements and recommendations from ANC 3C the “great weight” to which they are entitled, and in so doing, fully credited the unique vantage point that ANC 3C holds with respect to the impact of the proposed application on the ANC’s constituents. The Board acknowledges the conditions included in the ANC Resolution and finds that they are appropriate for this order because they provide mitigation measures related to the Project’s impacts associated with the relief requested, namely parking, and relatedly, loading, and the conditions are similar to other conditions previously approved by the Board.

DECISION

Based on the case record, the testimony at the public hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exception relief under 11-C DCMR § 702 and grants full relief from the parking requirements. Accordingly, it is therefore **ORDERED** that this application is hereby **GRANTED, AND PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 42C AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall have flexibility with the Project in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - b. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials;

- c. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - d. To vary the number of residential units by plus or minus 10%; and
 - e. To vary the final design of the Project in response to Historic Preservation Review Board (“HPRB”) and the historic approval process.
2. The Applicant shall implement the following TDM Plan as described in the Applicant’s Transportation Statement and recommended by DDOT (Ex. 32A, 33):
- a. Identify a Transportation Coordinator for the development. The Transportation Coordinator will act as a point of contact with DDOT, goDCgo, and Zoning Enforcement;
 - b. Will provide the Transportation Coordinator’s contact information to goDCgo and coordinate with goDCgo;
 - c. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents, employees, and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car-Free Day) on the property’s website and in any internal building newsletters or communications;
 - d. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for the project and available options for implementing the TDM Plan;
 - e. Will post “getting here” information in a visible and prominent location on the website with a focus on nonautomotive travel modes. Links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers discouraging parking on-street in RPP zones;
 - f. Provide residents and employees who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (“MWCOG”) or other comparable service if MWCOG does not offer this in the future;
 - g. Transportation Coordinator will subscribe to goDCgo’s residential newsletter;
 - h. Post all TDM commitments on the website, publicize availability, and allow the public to see what commitments have been promised;
 - i. Will provide 16 long-term and eight (8) short-term bicycle parking spaces. Long-term bicycle storage space will be provided free of charge to residents;

- j. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes;
 - k. Will provide a bicycle repair station in the long-term bicycle parking storage room;
 - l. Will identify nearby parking lot/garage facilities that can provide additional parking for guests, customers, and employees;
 - m. Will provide two (2) Capital Bikeshare expansion plates (8 docks) for the adjacent station, which requires 20 additional linear feet. The larger Bikeshare station will be shown in permitting plans that the Applicant submits for permitting. The Applicant will pay for the expansion to the existing station and pay to have the Bikeshare station removed and relocated during construction;
 - n. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with DC Commuter Benefits Law and participate in one of the three transportation benefits outlined in the law (employee-paid tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future;
 - o. Will participate in Capital Bikeshare corporate at the Gold Level and offer free annual memberships to employees at the site for the first five (5) years of building occupancy;
 - p. Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home ("GRH") brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com;
 - q. Install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum, the display will include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, carsharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
 - r. Will incorporate a clause into all new leases, lease renewals, or lease amendments, which prohibits residents from participating in the District's Residential Permit Parking ("RPP") and Visitor Parking Permit ("VPP") programs; provided that for existing tenants of the Macklin, the Applicant will make commercially reasonable efforts to amend existing leases to incorporate this clause to the extent permitted by landlord-tenant law;
 - s. Will offer a free annual Capital Bikeshare membership to every resident during the first five (5) years of building occupancy.
3. The Applicant shall implement the following Loading Management Plan as described in the Applicant's Transportation Statement and recommended by DDOT (Ex. 32A, 33):

- a. A loading manager will be designated by the building management who will be on duty during delivery hours. The loading manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
- b. A lease provision will require all tenants to use only the loading area for all deliveries and move-in and move-out activities;
- c. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger);
- d. The loading manager will schedule deliveries using the berth such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not compromise safety or impede Connecticut Avenue N.W. or the public alley's functionality;
- e. The loading manager will schedule residential loading activities so as not to conflict with retail deliveries. All residential loading will need to be scheduled with the loading manager and it is anticipated that residential loading will take place primarily during afternoons/evenings, when the retail loading activity is minimal;
- f. The loading manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading area do not block vehicular, bike, or pedestrian traffic along Connecticut Avenue N.W. except during those times when a truck is actively entering or exiting a loading berth;
- g. Service vehicle and truck traffic interfacing with Connecticut Avenue N.W. traffic will be monitored during peak periods and management measures will be taken, if necessary, to reduce conflicts between truck and vehicular movements;
- h. Residential and retail trash pickup will occur outside of the peak hours at the residential loading area accessible from the commercial loading zone on Connecticut Avenue;
- i. The loading manager will monitor the timing of the retail and/or residential deliveries to see if any adjustments need to be made to ensure any conflicts with the retail loading and residential loading activities are minimized;
- j. Trucks using the loading areas will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight);
- k. The loading manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading areas as well as notifying all drivers of any access

or egress restrictions (ex. No left turn on Connecticut Avenue NW). The loading manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The loading manager will also post these materials and other relevant notices in a prominent location within the loading area.

4. The Applicant shall implement the following conditions agreed to with ANC 3C (Ex. 98)
 - a. Will use commercially reasonable efforts to secure the option to rent eight off-site parking spaces for residents.
 - b. The residents of the Macklin addition shall use the alley loading area for:
 - i. Trash pick-up that is scheduled for the same time and days each week, and unscheduled deliveries provided the vehicles can fit into the 24-foot loading area; and
 - ii. Move-ins and move-outs provided the activity is scheduled with the building loading manager to occur after 9:30am and end by 4pm, Monday through Saturday. All delivery or loading/unloading activity, scheduled or unscheduled, where the vehicle exceeds the size of the alley loading area will use the Connecticut Avenue loading area. No moving in or moving out activities will be allowed on national holidays or Sundays.
 - c. The residents of the Macklin shall use the alley loading area for move-ins and move-outs and deliveries according to condition 3.bii, and trash pick-ups will occur according to 3.d.i.
 - d. The residents of the townhomes and retail users shall use the Connecticut Avenue loading area only during non-rush hour periods when parking is allowed, provided that loading, unloading and delivery parking is limited to the area set aside for this purpose, and
 - i. Trash pick-up is scheduled for the same time and days each week;
 - ii. Move-ins and move-outs are scheduled with the building loading manager to occur after 9:30am and end by 4pm, Monday through Friday, and 1pm through 5pm on Saturday. No moving in or moving out activities will be allowed on national holidays or Sundays; and
 - iii. Retail deliveries are scheduled and occur at times not set aside for residential moving activities or trash pick-ups.
 - e. Weekend use of the Connecticut Avenue loading area is subject to the above conditions and is limited to 1pm to 5pm for the Project users. The Cleveland Park farmers market is permitted to use the loading area on Saturday mornings when it is not in use by the project.

- f. The Connecticut Avenue loading area is permitted to be used for public parking after 7pm on weekdays and after 5pm on Saturday and all day on Sunday, if permitted by DDOT;
- g. A loading manager will be either on site or accessible at all times whenever the loading areas are available for use and will manage the scheduling or loading activities to ensure that the capacity of the loading areas is not exceeded and that the use of the loading areas is in compliance with conditions C-G, and
 - i. At least one maintenance person will be on site to manage any conflicts at the loading areas; and
 - ii. The alley loading area will be monitored with closed circuit video and an intercom system connected to the maintenance person's office;
- h. Trucks using the loading areas shall comply with any truck restrictions on neighborhood streets per posted truck restriction signs and the truck routing and restriction map, <http://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/TruckandBusThroughRouteandRestrictions.pdf>, or its successor document; and
- i. There shall be no loss of public parking spaces to accommodate truck movements accessing or exiting the loading areas.

VOTE: _____ (Frederick L. Hill, Carlton Hart, Lorna John, and Anthony Hood to APPROVE)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____

SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH

TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.